THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5865 OF 1999

21.02.2006

Between:

Shaik Ahmed (Died), S/o. Shaik Nimber

And others

… Petitioners

AND

The Commissioner, Municipal Corporation of Hyderabad,

Hyderabad.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5865 OF 1999

ORDER:

The petitioner is a tenant in a shop/mulgi bearing No.5-9-57/9 situated at Basheerbagh Cross Roads, Hyderabad. He alleges that the landlady having failed to evict him under A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (the Act, for brevity) prevailed upon the respondent Corporation, who in the guise of widening the road, threatened to demolish the petitioner's shop for the purpose of road widening. Therefore, the present writ petition is filed.

This Court admitted the writ petition on 26.3.1999 and by an order dated 23.4.1999 in W.P.M.P.No.7338 of 1999 ordered *status quo*. Though notice is served, no counter affidavit is filed by the respondent. I n **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own

volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.

In similar circumstances, W.P.No.21341 of 2000 dated 7.11.2000 and W.P.No.22216 of 2000 dated 16.11.2000 were disposed of by me with direction to respondent –Corporation to take necessary action as per the Land Acquisition Act or the HMC Act, if the landlords are not willing to give their consent. I also directed that if the consent is already given by the landlord/owner, the MCH shall be at liberty to proceed with further action for widening the road. In view of the judgment of the Full Bench in M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad the MCH has to obtain consent even from the tenants without which the road widening work cannot be taken up unless MCH takes action for acquisition of land as per law. Needless to mention that unless proper procedure is contemplated and initiated, the MCH, in law, is not entitled to either forcibly take possession or demolish the structures in the area.

In this case, the petitioner was allegedly not issued any notice seeking willingness/consent to give advance possession to MCH for the road widening project. After issuing notice by the MCH, if the tenant is not willing to give consent to give advance possession, needless to mention that MCH has to initiate action under the provisions of the Land Acquisition Act, 1894. Till then, the petitioner cannot be deprived of his right to enjoy the property, nor the MCH can demolish the structures for the purpose of road widening.

The writ petition, with the above observations, is accordingly disposed of. No costs.

_____

(**V.V.S.RAO, J**)

February 21, 2006

YS